

SECURITIES AND EXCHANGE)	
COMMISSION,)	
Plaintiff,)	
)	
v.)	
)	
ROGER KNOX, WINTERCAP SA)	
MICHAEL T. GASTAUER,)	
WB21 US INC., SILVERTON, SA INC.,)	Civil Action No. 18-cv-12058 (RGS)
WB21 NA INC., C CAPITAL)	
CORPORATION, WINTERCAP)	
SA INC., AND B2 CAP INC.)	
Defendants,)	
)	
RAIMUND GASTAUER, SIMONE)	
GASTAUER FOEHR, B21 LTD.,)	
SHAMAL INTERNATIONAL FZE,)	
AND WB21 DMCC,)	
Relief Defendants.)	
)	

**DEFENDANTS WB21 US INC., SILVERTON, SA, INC., WB21 NA INC., C CAPITAL CORPORATION, WINTERCAP SA INC., AND B2 CAP INC'S MOTION FOR DISMISSAL FOR FAILURE TO STATE A CLAIM PURSUANT TO
FED. R. CIV. P. 12(b)(6)**

The Defendants above move the Court to dismiss their case because the Amended Complaint fails to adequately state a claim against them. As grounds , the Defendants state:

1. The Amended Complaint fails to set forth “factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory,” dismissal under Federal Rule of Civil Procedure 12(b)(6) is appropriate. *CentroMedico del Turabo, Inc. v. Feliciano de Melecio*, 406 F.3d 1, 6 (1st Cir. 2005).

The Amended Complaint's "threadbare recitals" of the elements of a cause of action, supported by mere conclusory statements cannot suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Amended Complaint as a whole hinges on allegations of fraud against these Defendants, and therefore must be dismissed for failure to plead with particularity pursuant to Fed. R. Civ. P. 9(b). *In re Sonus Networks, Inc. Sec. Litig.*, 2006 WL 1308165, at *6 (D. Mass. May 10, 2006) ("9(b) applies to all averments of fraud and is not limited to allegations styled or denominated as fraud")(internal quotations and citation omitted).

As further grounds, the Defendants refer this Court to their Memorandum of Law, filed concurrently.

Respectfully submitted,
WB21 US Inc.
Silverton SA, Inc.
WB21 NA, Inc.
C Capital Corporation
Wintercap SA Inc.
B2 Cap Inc.
By their attorneys,

/s/ Timothy Cornell
Timothy Cornell (BBO #654412)
Patrick Dolan (BBO# 564250)
Cornell Dolan, P.C.
One International Place, Suite 1400
Boston, MA 02110
Tel: (617) 535-7763
tcornell@cornelldolan.com
pdolan@cornelldolan.com

DATE: April 22, 2019

Local Rule 7.1 Certification

I certify that I have conferred with counsel for the Plaintiff, who has informed me that the Plaintiff would oppose this Motion.

/s/ Timothy Cornell

ECF Notification

I certify that this Motion and the accompanying Memorandum will be filed through the Court's ECF system and that the parties to this action will receive notice electronically.

/s/ Timothy Cornell